

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DANIEL BINGMAN,

Petitioner,

v.

Civil Action No. 2:08cv52

SHANNON MARKLE,

Respondent.

ORDER

It will be recalled that on January 5, 2009, Magistrate Judge Kaull filed his Report and Recommendation, wherein the Petitioner was directed, in accordance with 28 U.S.C. §636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On January 20, 2009, the Court received Petitioner's objections.

Upon examination of the report from the Magistrate Judge, it appears to the Court that all matters raised and suggested by Magistrate Judge Kaull in his Report and Recommendation are appropriate. In his objections, it appears to the Court that the Petitioner is now electing to proceed on the petition as filed and proceed only on the exhausted claims. Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition For Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, wherein Petitioner claims that the state trial evidence was not sufficient to convict him, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation, as were the Respondent's Motion for Summary Judgment and the Petitioner's response thereto. Furthermore, upon consideration of the Petitioner's objections, it appears to the Court that the

Petitioner has not raised any issues that were not thoroughly considered and addressed by Magistrate Judge Kaull in his Report and Recommendation. Therefore, upon a de novo review, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is hereby

ORDERED that Respondent's Motion for Summary Judgment (docket #10) be, and the same hereby is, **GRANTED**. It is further

ORDERED that Daniel Bingman's Petition in this matter be, and the same hereby is, **DISMISSED WITH PREJUDICE** and **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Respondent. It is further

ORDERED that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4, Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a), Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: February 9th, 2009


United States District Judge